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ATTORNEYS FOR THE PLAINTIFF

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

_____	)	
Adam M. Finkel,	)	Civil Action No. _____
Plaintiff,	)	
	)	Hon _____
v)	)	
	)	<b>COMPLAINT</b>
The United States Department Of Labor	)	
and Occupational Health and Safety	)	
Administration,	)	
	)	
Defendants.	)	
_____	)	

This is an action pursuant to the Freedom of Information Act, 5 U.S.C. §552 et seq. For complaint plaintiff alleges:

Parties

1. Plaintiff Adam M. Finkel is a citizen of the United States who resides at 1 Pennington-Lawrenceville Road, Pennington, New Jersey. Plaintiff is a professor at the University of Medicine and Dentistry of New Jersey (UMDNJ) and a visiting professor at Princeton University.
2. Defendant United States Department of Labor (DOL) is an agency of the United States Government within the meaning of 5 U.S.C. §552(a). Defendant Occupational Safety and Health Administration (OSHA) is an agency within the DOL and is an agency of the United States Government within the meaning of 5 U.S.C. §552(a) .

Jurisdiction

3. This Court has jurisdiction of this matter pursuant to 28 U.S.C. §1331 and 5 U.S.C. § 552(a)(4)(B).

Venue

4. Venue is properly in this Court pursuant to 5 U.S.C. §552(a)(4)(B).

Statement of Facts

5. On or about June 26, 2005, plaintiff made a lawful request to the DOL for certain records pursuant to the Freedom of Information Act, 5 U.S.C. §552 et seq. (the Act). Exhibit 1. The request sought certain records of the Occupational Safety and Health Administration relating to possible exposures of OSHA inspectors, and employees in facilities inspected by OSHA inspectors, to unhealthy or hazardous levels of beryllium. Plaintiff is conducting important academic research in this area.
6. DOL has refused to provide the records requested, without justification.
7. On or about August 12, 2005, plaintiff filed a lawful administrative appeal to the Office of the Solicitor, United States Department of Labor, appealing the agency's refusal to disclose the requested records. Exhibit 2.
8. As of the date of this filing, DOL has not ruled on plaintiff's appeal. Pursuant to 5 U.S.C. §552(a)(6)(C), the appeal is deemed to have been denied.
9. On or about August 12, 2005, plaintiff made a lawful request to the DOL for certain records pursuant to the Freedom of Information Act, 5 U.S.C. §552 et seq. Exhibit 3. The request sought certain records of OSHA quantifying the airborne and surface concentrations of chemical substances in workplaces in which OSHA inspectors obtained samples. Plaintiff is conducting important academic research in this area..
10. DOL has refused to provide the records requested, without justification.
11. On or about September 20, 2005, plaintiff filed a lawful administrative appeal to the Office of the Solicitor, United States Department of Labor, appealing the agency's refusal to disclose the requested records. Exhibit 4.
12. As of the date of this filing, DOL has not ruled on plaintiff's appeal. Pursuant to 5 U.S.C. §552(a)(6)(C), the appeal is deemed to have been denied.
13. Plaintiff was employed by and remains for a brief period on the payroll of OSHA. In response to previous actions by plaintiff concerning possible exposures of OSHA inspectors, and employees in facilities inspected by OSHA inspectors, to unhealthy or hazardous levels of beryllium, OSHA punitively reassigned plaintiff to an inopportune position and location. Plaintiff brought a whistleblower action, which has since been settled.
14. DOL's refusal to disclose the requested records is without justification. The records requested do not fall within the meaning of any known exception to the Act's disclosure requirements.
15. Upon information and belief, the DOL's refusal to disclose the requested records is influenced in whole or in part by a continuing animus against plaintiff from the previous whistleblower action.

16. Plaintiff lawfully requested that DOL waive its fees as the records were being sought for independent academic research purposes. Plaintiff has provided to DOL a detailed statement of reasons for his fee waiver request, and offered to pay up to \$500 of costs without waiving his right to seek the fee waiver in this action. Plaintiff's request for waiver meets the standard for such a waiver.

17. As of the date of this filing, the DOL has refused to grant plaintiff's fee waiver. DOL's refusal to grant the fee waiver is without justification.

WHEREFORE, plaintiff Adam M. Finkel prays that this Court:

- a. Enter an order compelling defendant to promptly disclose all records requested by plaintiff;
- b. Enter an order waiving all fees for such disclosure;
- c. Award plaintiff the costs of this suit including but not limited to reasonable attorneys fees pursuant to 5 U.S.C. §552(a)(4)(E); and
- d. Award such other and further relief as the law and interests of justice may require.

Respectfully submitted,

POTTER AND DICKSON

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Dated: November 21, 2005

CERTIFICATION

I hereby certify that the matter in this controversy is not the subject of any other court, arbitration or administrative proceeding, other than the administrative appeals set forth in paragraphs 7 and 11, which are deemed to have been exhausted pursuant to 5 U.S.C. §552(a)(6)(C).

S/ Peter Dickson  
Peter Dickson